

WARREN ZONING BOARD OF REVIEW
October 15, 2014
Minutes

The regular meeting of the Warren Zoning Board was called to order at 7:00 pm by Chairman A. Harrington. Also present Vice Chairman S. Calenda, P. Attemann, A. Ellis, 1st Alternate M. Emmencker and 2nd Alternate W. Barrett Holby, Jr.

Approval of Minutes September 17, 2014 meeting. It was moved by A. Ellis to accept the minutes. Second by Vice Chairman S. Calenda. Yea - Chairman A. Harrington, Vice Chairman S. Calenda, P. Attemann, A. Ellis and M. Emmencker.

Old Business

Application #14-10, John Quattrocchi RT, appellant, 325 Water St, plat map 5, lot 1, request for an Appeal of the January 17, 2014 Stop Work Order issued by the Warren Zoning Officer regarding maintenance dredging.

Joelle Rocha, Esq, Kelly & Manini, Attorneys at Law, 128 Dorrance Street, Suite 300, Providence, RI, represented Application #14-10, John Quattrocchi RT, appellant, 325 Water St, plat map 5, lot 1, request for an *Appeal* of the January 17, 2014 Stop Work Order issued by the Warren Zoning Officer regarding maintenance dredging. Ms. Rocha gave testimony that Mr. Quattrocchi had applied for relief from CRMC. As part of that application process Mr. Quattrocchi needed to come to the Town Zoning and Building Official to get a sign off. Mr. Quattrocchi submitted that paperwork along with the plans to Mr. Nash, who filled out that paperwork. On that paperwork, Mr. Nash certified that he had reviewed the plans submitted, he had found that the issuance of a second building permit was not required and that the plans conformed with all elements of the Zoning Ordinance. If those plans had required Zoning approval, that the applicant had either secured that approval and the appeal period for that had passed. Mr. Nash had certified this in two locations on that application. Ms. Rocha further explained that they can only dredge from November 1 to January 31 so not to no effect spawning sea life. They will have to start from the beginning. The only permit that remains is CRMC. If they are denied here, they will be going to Superior Court.

Ms Rocha then read the following into the record:

AFFIDAVIT OF JOHN QUATTROCCHI, III, IN SUPPORT OF APPEAL

I, John Quattrocchi, III, under the pains and penalties of perjury, do hereby attest to the accuracy of the following statement:

1. I am the Trustee and sole beneficiary of the John Quattrocchi III Revocable Trust, which is the owner of property located at 325 Water Street, Warren, Rhode Island, otherwise known as Assessor's Plat 5, Lot 1 ("Property").
2. In October, 2013, I began substantial preliminary work at the Property, including conducting soil samples, preliminary engineering and beginning the process of applying to the Coastal Resources Management Council ("CRMC") for an Assent to conduct maintenance dredging at my Property.
3. On October 31, 2013, my engineer, Warren Hall, stamped the plans for the maintenance dredging and submitted them, along with my CRMC application to the Building and Zoning Official, William Nash, Jr.

4. On November 1, 2013, William Nash, Jr., completed a document, from him, to CRMC which certified that: 1) he had reviewed the plans for the proposed maintenance dredge at the Property; 2) he found that the issuance of a local building permit was not required under the State Building Code; 3) a Septic System Suitability Determination (SSD) need not be obtained from the R.I. Department of Environmental Management; 4) the plans conform with all elements of the zoning ordinance, and that if said plans require zoning board approval, that the applicant has secured such approval and that the requisite appeal period has passed with no appeal filed or appeal is final. See form attached hereto as Exhibit A.

5. As to the certification that plans conform with all elements of the zoning ordinance, and that if said plans require zoning board approval, I had secured such approval and that the requisite appeal period has passed with no appeal filed or appeal is final, William Nash, Jr. signed and certified this statement in two separate locations on the form to CRMC. See Exhibit A.

6. The form at Exhibit A, signed and certified by William Nash, Jr., was submitted to CRMC in support of my application, and was a requirement of CRMC.

7. On January 7, 2014, I received my Assent from CRMC to proceed with the maintenance dredging work. The Assent required that all work be completed no later than January 31, 2014 (The "Dredge Window"). I had also received all other state and federal approvals to proceed with the work. See Exhibit B.

8. On January 10, 2014, I began the significant work mandated to prepare the site for dredging, including relocating the dockage tenants and floats as well as installing silt protection as required in my CRMC Assent.

9. From January 13-15, 2014, I continued the significant site preparation including excavating the spoil area, and trucking out material from the Property. I began dredging on January 15, 2014, and continued dredging through January 17, 2014.

10. On January 17, 2014, I was served, by William Nash and an officer of the Town of Warren Police Department with a Stop Work Order. I ceased work at the Property. See Exhibit C.

11. By the time I was able to seek legal advice and appeal the Stop Work Order, ice flows in the marina prevented the continued maintenance dredging, leaving the site open and unfinished. The "Dredge Window" closed. I then had no choice but to perform significant additional work to close and fill the pits excavated during the maintenance dredging work, for safety reasons, until the issue regarding the Stop Work Order was resolved. Because of this, my parking area at the marina was unusable for four (4) months.

Public Comment – NONE

It was moved by S. Calenda on Application #14-10, John Quattrocchi RT, appellant, 325 Water St, plat map 5, lot 1, request for an Appeal of the January 17, 2014 Stop Work Order issued by the Warren Zoning Officer regarding maintenance dredging be denied. The decision is being based on the testimony that was heard from council and the testimony heard from the applicant, that apparently he did not feel he needed to go to the Warren Planning Board although the Warren Building Official indicated that he did need to go Warren Planning Board. The decision is also being based on a finding of fact that the ordinances are clear, that the applicant would have to go and satisfy the Warren Planning Board even if he did have approval from CRMC. The ordinances are clear when excavation is done in the Town of Warren that Planning Board approval on the over-lay district be applied for and approved. Seconded by

A. Ellis. Yea - Chairman A. Harrington, Vice Chairman S. Calenda, P. Attemann, A. Ellis and M. Emmencker.

New Business

Application #14-29, Nafez & Zulma Salem, owners and applicants, 5 Tyler Ct; plat map 15A, lot 367, request for a *Variance* from sections 32-88C and 32-88E of the Warren Zoning Ordinance to allow for rear yard setback of 18.5' where 35' is required' and an accessory setback of 3.3' where 10' is required.

James Blidan Esq, Blais Cunningham & Crowe Chester, LLP, PO Box 1325, 150 Main St, Pawtucket, RI 02862, represented Application #14-29, Nafez & Zulma Salem, owners and applicants, 5 Tyler Ct; plat map 15A, lot 367, request for a *Variance* from sections 32-88C and 32-88E of the Warren Zoning Ordinance to allow for rear yard setback of 18.5' where 35' is required' and an accessory setback of 3.3' where 10' is required.

Edward Pimentel, AICP, Pimentel Consulting, Inc., 26 Avon Rd, Cranston, RI 02905, qualified as an expert witness and gave testimony.

Mr. Salem stated that the work had already been completed when the Building Official came and issued a Stop Work Order. It was also at this time, when it came to his attention that the contractor had not applied for the appropriate permits.

Public Comment

Mary Scanlon, 130 Fatima Dr., Warren, stated she feels that "treehouse" is too close to the property line.

Robert J. Healey Jr. Esq, 665 Metacom Ave, Warren represented an abutter, Lawrence Bouchard of 132 Fatima Dr., Warren. Mr. Healey pointed the following ordinance to the Board, 32-28 with specific attention to "that the hardship that will be suffered by the owner of the subject property if the dimensional variance is not granted shall amount to more than a mere inconvenience" of that section. He also drew attention to the structure is not being held up by the tree but that it is actually being held up by supports.

Mr. Bouchard, a backyard abutter, stated that he and his wife were in the back yard while Mr. Salem was describing his plans to a neighbor. Mr. Bouchard stated he heard Mr. Salem was giving details of the cabana he was having built and of a pool being installed in the future with lighting being placed in the trees. Mr. Bouchard also stated that he is retired and home at all times. He continued to explain that after the Building Official came the work continued and the projects were completed. Mr. Bouchard stated that he put his complaint in on May 20 and work was completed without a permit.

Chairman A. Harrington suggests there be two separate motions. One motion shall address the deck and one shall address the "Treehouse".

It was moved by S. Calenda to approve Application #14-29, Nafez & Zulma Salem, owners and applicants, 5 Tyler Ct; plat map 15A, lot 367, request for a *Variance* from sections 32-88C and 32-88E of the Warren Zoning Ordinance to allow for rear yard setback of 18.5' where 35' is required'. The Applicant was asking for the 2 dimensional variances. The first motion was to grant the variance for the deck. The finding of fact after hearing testimony from council, their expert witness and from the applicant, that the hardship was due to the unique characteristics of the lot. Also a finding of fact that due to the unique characteristics of the lot dimensions the deck was placed where it could only be placed. The hardship was not a result of any prior action by the applicant, although he did have trust and faith in the contractor, the applicant didn't participate in the constructing of the deck. The applicant did testify that he has no construction knowledge and that his ignorance, be it as may, was of his own experiences and was not construction granted. The motion if granted will not alter the general characteristics of the surround area based on the deck's location conforms with the purpose of the Warren Zoning Ordinance and the comprehensive plan. Further a finding of fact the relief requested is the least amount of relief necessary. The applicant testified through his expert witness that it was 3.3 % needed relief. The additional

standards, this is not a benefit to anyone else but to the applicant. The dimensional variance and hardship would be more than a mere inconvenience to dismantle the deck and make it compliant to the 35' set back.

Seconded by M. Emmencker. Yea – Vice Chairman S. Calenda and M. Emmencker. Nay – Chairman A. Harrington, P. Attemann and A. Ellis. **Motion fails.**

It was moved by Vice Chairman S. Calenda to approve Application #14-29, Nafez & Zulma Salem, owners and applicants, 5 Tyler Ct; plat map 15A, lot 367, request for a Variance from sections 32-88C and 32-88E of the Warren Zoning Ordinance to allow for an accessory setback of 3.3' where 10' is required, the applicant testified through council and his expert witness, that the characteristics of the lot and the specific location of these trees that are incorporated the "Treehouse", were pre-existing, this was the only area of trees where this could be constructed. The hardship was not a result of any prior action that the applicant did prior to the structure being constructed. Also, a finding of fact that the granting of this variance will not alter the general characteristics of the surrounding area of the request and it conforms with the purpose of the Warren Zoning Ordinance. Photos were presented to this Board and they show no more accessory buildings within the setbacks or not within the setbacks and conforms with the surrounding neighborhood. The relief that is being requested is the least necessary. This request complies with and will not cause any burden, hardship or nuisance to the neighborhood.

P. Attemann added that he believed this should be defined an accessory structure because it is greater than 120'. Therefore it needs to comply with the provisions of an accessory structure and he didn't consider this a "Treehouse".

Seconded by A. Ellis. Yea – Vice Chairman S. Calenda, A. Ellis and M. Emmencker. Nay – Chairman A. Harrington and P. Attemann. **Motion fails.**

Application #14-30 Nicholas & Susan Massed, owners and applicants, 44 Everett St., plat map 11, lots 2, 3, and 4, request for a Special Use Permit from section 32-47 of the Warren Zoning Ordinance to create an apartment on the second floor of the existing detached garage.

Mr. Robert Andrews, Architect, gave testimony on behalf of Application #14-30 Nicholas & Susan Massed, owners and applicants, 44 Everett St., plat map 11, lots 2, 3, and 4, request for a *Special Use Permit* from section 32-47 of the Warren Zoning Ordinance to create an apartment on the second floor of the existing detached garage. He pointed out that this is zoned R6. He also stated that the applicant has lived at this property for the past 33 year and the family has owned the property since the 1940's.

Nicholas Massed, applicant gave testimony of the current use of the property. The residence is currently a "duplex" with an apartment located on the second floor of the home. He also has a subcontracting business being run out of the bottom of the building where the second floor apartment is being proposed.

Public Comment - NONE

It was move by S. Calenda to approve Application #14-30 Nicholas & Susan Massed, owners and applicants, 44 Everett St., plat map 11, lots 2, 3, and 4, request for a Special Use Permit from section 32-47 of the Warren Zoning Ordinance to create an apartment on the second floor of the existing detached garage. He made a finding of fact that this special use permit if grated is compatible with the neighboring land uses as we have heard testimony from the applicant and the applicant's expert witness who has identified himself as an architect that it is compatible with the surrounding area and land use. Also, a finding of fact that the special use will not create a hazard in the neighborhood. We've heard testimony that there are multiple multi family residences that already exists and there are several commercial building that are in operation. Finding of fact, that the special use permit will be compatible with the community and the comprehensive plan. Testimony was heard that it will be conducive with the surrounding neighborhood and there was no abjection from the public. Also a finding of fact that the

public convenience and welfare will be served, it will not create any type of a hazard, there is no hazard pre-existing and it will be continuing to do so. He moved that the application be approved, all permitting process is to be approved through the Building Official as well as any local or state fire codes that need to be met will also be permitted and the proper process be obtained by the applicant. It is the Board's determination and was viewed that this is a multi-family dwelling situation as characterize in the use tables of the Zoning Ordinance. The approval will also be conditional that a parking plan be submitted and approved by the Building Official. Seconded by P. Attemann. Yea - Chairman A. Harrington, Vice Chairman S. Calenda, P. Attemann, A. Ellis and M. Emmencker.

Chairman A. Harrington called out of order Application #14-31, GRF Association, LLC.

Solicitor Skwirz addressed the Board and public with regard to Application #14-31, GRF Association, LLC. He explained that GRF Associates requested a continuance of one month, to the November 21, 2014 Zoning Board meeting, with the agreement that additional information would be submitted to the Building Official and Solicitor.

Interim Building Official Eames stated the Application #14-31, GRF Association, LLC, requested a continuance to the next meeting on November 21, 2014. There is currently a stop work order in effect and that is what GRF Association, LLC is appealing. There should be no work going on at this location at this time.

Andrew Sharpio, 125 Touisset Rd, Warren, requested to be heard for the record. He stated there's no reflection on the Board, we the abutters have received from the Town notification two weeks ago of this hearing. He also stated that he was aware that members of the Administration were holding a meeting this morning. He believes that is disgraceful, that an item as important as this involving hundreds and hundreds of thousands of dollars is postponed the day of the hearing, with no notification of the changes to the abutters. He continued, the Town could have easily sent out emails to the abutters, they have a list of who the notifications went to. He again stressed that he was very, very disappointed that this is another example of how the Town is ignoring the concerns of the abutter on of this particular issue. He then thanked the Board for allowing him to go on the record.

Chairman A. Harrington requested the Building Official and the Solicitor shall explore enforcement of the Stop Work Order and the appeal of the Stop Work Order will be heard on November 21, 2014 meeting.

Application #14-32 David Reynolds, owner and applicant, 20 Hall Ave., plat map 9, lot 78, request for a Variance from section 32-77 of the Warren Zoning Ordinance to add porch to front of house with 0 front yard setback where 20' is required, and to add porch to rear of house with 23.3' rear yard setback where 30' is required.

Bruce Cox, Sleprow & Associates, 1481 Wampanoag Trail, E. Providence, RI gave testimony for Application #14-32 David Reynolds, owner and applicant, 20 Hall Ave., plat map 9, lot 78, request for a Variance from section 32-77 of the Warren Zoning Ordinance to add porch to front of house with 0 front yard setback where 20' is required and to add porch to rear of house with 23.3' rear yard setback where 30' is required.

Public Comment

William Deneault, 68 Wood St, Warren, RI, had a concern with regard to the parking plan, especially in the winter when there is snow. He also wanted to know what the total lot coverage would be.

It was moved by A. Ellis to approve Application #14-32 David Reynolds, owner and applicant, 20 Hall Ave., plat map 9, lot 78, request for a Variance from section 32-77 of the Warren Zoning Ordinance to add porch to front of house with 0 front yard setback where 20' is required and to add porch to rear of house with 23.3' rear yard setback where 30' is required. The applicant has asked to add porches to both ends of the building and to reconfigure it from 2 apartments to 4 apartments. Finding of

fact that the merge exists is due to the unique characteristics of the property and of the existing structure. The Board heard testimony that the building is located right on or very close to the property line adjacent to an existing street, Hall Ave which is a pre-existing street and this property was not a result of the applicant's actions. By granting this variance it will not alter the general character of the surrounding area which contains many other existing multi-family buildings of this nature. The relief being sought to add the porches is the least relief necessary based on the testimony to align with the existing house and to not make the issue with the setbacks even worse. It is not going to cause detriment and the proposed variance will be compatible with the comprehensive plan. A detailed parking plan submitted to the Building Official for approval. Also the lot coverage calculations must be submitted to the Building Official, mapping out the existing residential structure, accessory structures and the proposed porches, for the Building Official to verify that the lot does not exceed what is allowed by the Ordinance. Seconded by S. Calenda Yea - Chairman A. Harrington, Vice Chairman S. Calenda, A. Ellis and M. Emmencker. Nay - P. Attemann

Application #14-33 E & H Realty, LLC, owner and Edward Ribeiro, applicant, 33 Kickemuit Rd, plat map 10, lot 1, request for a *Special Use Permit* from section 32-166 of the Warren Zoning Ordinance to operate a General Contractor business with an office on the 1st floor, carpentry shop, interior storage and exterior storage of equipment in a rural business zone.

Bruce Cox, Sleprow & Associates, 1481 Wampanoag Trail, E. Providence, RI, the applicant owns and would like to run his commercial construction company from this overlay district location

Edward Ribeiro, gave testimony that he runs a commercial construction company. There will be a 2 person office operating from this location. He will be storing his vehicles at this location which will consist of 2 vans, 2 pickup trucks

Public Comment – NONE

It was moved by S. Calenda to approve Application #14-33 E & H Realty, LLC, owner and Edward Ribeiro, applicant, who is present, of 33 Kickemuit Rd, plat map 10, lot 1, request for a *Special Use Permit* from section 32-166 of the Warren Zoning Ordinance to operate a General Contractor business with an office on the 1st floor, carpentry shop, interior storage and exterior storage of equipment in a rural business zone. He found the following finding of fact, the Special Use will be compatible with the neighborhood and surrounding land uses as we have heard testimony from the Applicant and his council that it is compatible with the neighborhood, with no objection from the public. Further finding of fact it will not create a hazard to the neighborhood, it will be compatible with the community comprehensive plan and the public convenience and welfare will be served.

Seconded by P. Attemann. Yea - Chairman A. Harrington, Vice Chairman S. Calenda, P. Attemann, A. Ellis and M. Emmencker.

Administrative Matters - NONE

Adjourn S. Calenda moved to adjourn the meeting at 10:42 PM. Second by P. Attemann. Yea - Chairman A. Harrington, Vice Chairman S. Calenda, P. Attemann, A. Ellis and M. Emmencker.

Respectfully Submitted,

Rhonda Lee Fortin